

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2533 of 2017

ORDER :

This criminal petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to enlarge the petitioner/A.2 on bail in the event of his arrest in connection with P.C.O.R.No.1166 of 2012-13 of Prohibition and Excise Station, Kodangal Police Station, Mahabubnagar District, registered for the offence punishable under Section 8(c) read with 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act'), apprehending his arrest.

2. The petitioner is a licensed dealer of selling toddy in Kosgi Village and on 11.01.2013 at about 1.30 p.m. in Kosgi Village, a raid was conducted at TFT Shop of the petitioner and samples were collected from the shop, one sample was analyzed by the Regional Prohibition and Excise Laboratory, Hyderabad, on analysis, the analyst opined that the toddy was adulterated with Alprazolam and Diazepam, which are Narcotic and Psychotropic Substances injuries to public health. Initially, the crime was registered under Rule 27(1) of A.P. Excise Toddy Rules, 2007, but on account of finding of Alprazolam and Diazepam in the toddy on analysis by the analyst, it was altered to Section 20(c) of the Act. Section 20 of the Act deals with punishment for contravention in relation to cannabis plant and cannabis, whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder (a)

cultivates any cannabis plant; or (b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees.

3. Dr.Challa Srinivasa Reddy, learned counsel for the petitioner, submitted that the police have not been followed the mandatory procedure under the Act and thereby the entire investigation is vitiated. It is further submitted that the petitioner and one Siva were found in possession of toddy in contravention of rules, but on analysis, as the toddy contained Alprazolam and Diazepam, the Section of law converted into Section 8(c) read with 20(c) of the Act. In such case, following the procedure under NDPS Act would not vitiate on that ground the petitioner is not entitled to pre-arrest bail.

4. Grant of pre-arrest bail is purely discretion of the Court and this Court has to exercise its power judiciously. Grant of pre-arrest bail is an exception and negation of pre-arrest bail is the rule. Unless exceptional circumstances are shown, the petitioner cannot be granted pre-arrest bail as a matter of routine. To grant pre-arrest bail, the Court has to satisfy that there is no prima facie material to conclude that the petitioner did commit no offence and that there is no chance of interfering with the further investigation. Here, the petitioner, being license holder of the shop, is responsible along with person, who was found in possession of toddy, by name, Siva. Hence, I find

prima facie material to conclude that the petitioner is committed the offence, thereby, I find no ground to enlarge the petitioner on pre-arrest bail. Consequently, the Criminal Petition is liable to be dismissed.

5. Accordingly, the Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

7th April 2017.

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